# CITY OF NEW ORLEANS CHIEF ADMINISTRATIVE OFFICE

# POLICY MEMORANDUM NO. 46(R)

**APRIL 26, 2004** 

TO: All Departments, Boards, Agencies, Commissions and Corporations

FROM: Charles L. Rice Jr., Chief Administrative Officer

SUBJECT: POLICIES AND PROCEDURES FOR DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

# SECTION I. PURPOSE, PROGRAM OBJECTIVE AND POLICY.

#### A. PRIOR POLICY MEMORANDA REVOKED.

This policy memorandum shall become effective upon the date of its issuance. Previously issued Policy Memorandum No. 46(R), dated April 10, 1984, and Policy Memorandum No. 67, dated July 11, 1985, are hereby revoked.

### B. PURPOSE AND PROGRAM OBJECTIVE.

The purpose of this policy memorandum is to establish the policies and procedures necessary for implementation and administration of the City's Disadvantaged Business Enterprise (DBE) Program, as established by Executive Order CRN 03-01, issued November 25, 2003. The objective of the DBE Program is to develop and administer a plan for (i) certification of eligible social and economically disadvantaged business and (ii) creating opportunity for meaningful participation in certain City contracts for such businesses that have been certified to be owned and controlled by social and economically disadvantaged persons (DBEs).

#### C. POLICY.

It is the policy of the City to ensure that DBEs, as defined in this policy memorandum, have an equal opportunity to receive and participate in City contracts. It shall also be the policy of the City:

- 1. To ensure nondiscrimination in the award and administration of City contracts.
- 2. To create a level-playing field upon which DBEs can compete fairly for City contracts.

- 3. To ensure that only firms that fully meet the certification standards described herein are permitted to participate as DBEs.
- 4. To help remove barriers to the participation of DBEs in City contracts.
- 5. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

#### SECTION II. GOVERNANCE AND PROGRAM ADMINISTRATION.

#### A. DEFINITIONS.

- 1. "Disadvantaged Business Enterprise," or "DBE," means a business entity that is owned and controlled by social and economically disadvantaged persons who hold at least a 51% equity interest in the entity, such that the business entity's ability to compete in the business world has been restricted due to industry practices and/or limited capital and/or restricted credit opportunities that are beyond its control.
- 2. "DBE Prime" shall mean that, with respect to seeking a particular City contract, one or more DBEs will perform in excess of 50% of the contract through its own forces and will share an amount of the monetary contract award equal to the work performed by the DBE(s). For example, if (a) a DBE will perform 65% of the work for a particular City contract with its own forces and will receive 65% of the contract remuneration and (b) the other 35% of the work will be performed by a non-DBE and the non-DBE will receive the remaining 35% of the contract remuneration, the contract would be considered as having ben performed by a DBE Prime.
- 3. "50/50 Joint Venture" means a 50/50 partnership between a DBE and a non-DBE business entity for the specific purpose of seeking and performing a particular City contract, where the DBE will perform 50% of the contract through its own forces and will share 50% of the monetary contract award.

### **B. ENFORCEMENT AND OVERSIGHT.**

The Chief Administrative Officer shall have primary responsibility for the setting of the annual overall goals and the specific contract goals for the DBE Program and for ensuring the cooperation and compliance of all City departments, agencies, boards, commissions and corporations with the DBE Program. The Mayor's Office of Economic Development, through the DBE Certification Officer and the DBE Compliance Officer, shall have responsibility for general oversight, administration and monitoring of the DBE Program.

#### C. CERTIFICATION STANDARDS AND PROCEDURE.

#### 1. Joint Certification.

The City has agreed to enter into a Cooperative Endeavor Agreement with the New Orleans Aviation Board ("NOAB") and the Sewerage and Water Board ("S&WB") to provide for a joint DBE certification process that permits cross-certification among the City, NOAB and S&WB. The effect of joint certification shall be such that a firm certified as a DBE by the City, NOAB or S&WB shall be considered as a certified DBE by the others.

# 2. Adoption of S&WB Certification Standards and Procedures.

In order to give full effect to the joint certification process, the City hereby adopts the S&WB's certification standards and procedures, as set forth in Exhibit "A" attached hereto and made a part hereof.

# 3. Applications.

Application for the DBE Certification may be obtained from the DBE Certification Officer through the Mayor's Office of Economic Development, 1340 Poydras St., 9<sup>th</sup> Floor, New Orleans, Louisiana 70112 or online at www.cityofno.com.

### D. CONTRACTS, GOAL SETTING.

### 1. Scope of Contracts.

Except as otherwise set forth herein, the policies and procedures set forth in this policy memorandum shall apply to all new City-assisted professional service and construction contracts entered into by the City or any of its agencies, boards, commissions or corporations on or after March 15, 2004, unless such City agency, board, commission or corporation has established its own disadvantage business plan and the Mayor has approved such plan or has received a written waiver from the Chief Administrative Officer from DBE Participation for a particular contract.

## 2. Overall DBE Participation Goal.

On an annual basis, the Chief Administrative Officer shall be responsible for establishing the overall DBE Participation goal for all City contracts. In determining the appropriate overall goal, the Chief Administrative Officer shall consider the availability of ready, willing and able DBEs to perform the types of contracts (as both prime and subcontractor) that the City intends to let during the goal period. In determining the availability of ready, willing and able DBEs and the appropriate overall DBE participation goal, the Chief Administrative Officer shall consider one or more of the following:

- a. Bidder's List
- b. DBE directory
- c. Disparity studies of New Orleans Metropolitan area
- d. Census data and SIC or NAICS codes
- e. Lists of other DBEs, MBEs or WBEs in New Orleans Metropolitan Area from other federal, state or local agencies
- f. Pre-bid attendance lists
- g. Past DBE participation
- h. Market data on employment, self-employment, education and training, union apprenticeship programs
- i. Input from organizations serving or representing DBEs, minority-owned or women owned businesses
- j. Data from federal, state and local procurement offices
- k. Input from prime contractors
- Any other data that would help to better measure the percentage of work DBEs would be likely to obtain in the absence of discrimination

Considering the above, the initial overall DBE participation goal for new City contracts entered into on or after February 1, 2004 shall be 35% for the fiscal year ending December 31, 2004.

#### 3. Contract Goals.

The default goal of DBE Participation in all City contracts shall be the overall goal set by the Chief Administrative Officer for the current fiscal year. However, the Chief Administrative Officer shall have the discretion to raise or lower the DBE Participation goal on a contract-by-contract basis for good cause shown, as determined by the Chief Administrative Officer in his or her sole discretion.

#### 4. 50/50 Joint Venture and DBE Prime Bid Incentive.

All RFPs and bid solicitations for City contracts shall contain a requirement that the contractor use its best efforts to comply with the DBE program. At discretion of the Chief Administrative Officer, certain RFP and bid solicitations for the City contracts may provide an incentive in the form of receiving extra points in the scoring of the RFP or bid response if such response is made by a 50/50 Joint Venture or a DBE Prime. For example, if the RFP or bid solicitation specifies a maximum of 20 points for DBE Participation responsiveness, the RFP or bid solicitation may contain an incentive granting an additional 10 points (for a maximum of 20 points for DBE Participation responsiveness, the RFP or bid solicitation may contain an incentive granting an additional 10 points (for

a maximum of 30 points) if the response is made by a 50/50 Joint Venture or a DBE Prime.

#### 5. Waiver of Contract Goals.

Upon receipt of a written request by a head of a City department, agency, board, commission or corporation, the Chief Administrative Officer may reduce the DBE participation goal or waive DBE participation in a particular contract if it is deemed by the Chief Administrative Officer, in his or her sole discretion, to be in the best interest of the City to do so. Any such reduction or waiver shall be made in writing.

### E. DBE CERTIFICATION OFFICER.

# 1. Appointment and Primary Duties.

The Executive Assistant to the Mayor for Economic Development shall appoint a DBE Certification Officer who shall report to the Executive Assistant to the Mayor for Economic Development, but who shall have direct, independent access to the Chief Administrative Officer concerning DBE certification matters and who shall be responsible for the following duties:

- a. Implementing and monitoring the DBE program, in coordination with other appropriate officials, in accordance with the policies and procedures set forth in this Policy Memorandum;
- b. Planning and participating in DBE training seminars;
- c. Assisting entities in the DBE certification process;
- d. Creating, maintaining and disseminating an updated Bidders List;
- e. Creating, maintaining and disseminating the City's updated directory of certified DBEs;
- f. Identifying financial institutions owned and operated by socially and economically disadvantaged persons;
- g. Providing outreach to DBEs and community organizations to advise them of contracting opportunities;
- h. Recruiting eligible businesses to apply for DBE certification through contracts with other governmental agencies, advertising or any other suitable means;
- i. Conducting and/or monitoring annual site visits to certified DBEs;
- j. Investigating complaints of non-eligibility of any certified DBEs;
- k. Initiating decertification procedures, when warranted, for certified DBEs who are found to be non-eligible under the DBE Program's certification standards, such as when certification has been made upon false information or information that is no longer accurate;
- 1. Exploring opportunities to develop mentor programs and mechanisms to encourage and facilitate the formation of the 50/50 Joint Ventures;

- m. Assisting DBEs in obtaining bonding;
- n. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance; and
- o. Working cooperatively with the DBE Compliance Officer, Chief Administrative Officer and any other City personnel to ensure the maximum effectiveness of the DBE Program objectives.

# 2. DBE Directory.

The DBE Certification Officer shall create and maintain an updated directory identifying all firms eligible to participate as DBEs. The directory shall list each DBE firm's name, address, phone number, date of the most recent certification and the type of work the firm has been certified to perform as a DBE. The Directory must be revised at least quarterly. The Directory shall be available for public dissemination and shall be posted on the City's website.

### 3. Bidders List.

The DBE Certification Officer shall create and maintain an updated Bidders List, consisting of information about all DBE and non-DBE firms that bid or quote on City contracts. The Bidders List must be updated at least quarterly. The purpose of this requirement is to allow use of the Bidders List approach to calculating overall goals. The Bidders List will include the name, address, DBE or non-DBE status, age and annual gross receipts of firms. This information may be collected, but not limited to, by one or more of the following ways:

- a. The use of mandatory RFP, bid and/or contract clauses, requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;
- b. A City-directed survey of a statistically sound sample of firms on a name/address list to get age/size information; and/or
- c. An inclusion of a notice in all solicitations and other widely disseminated requests to firms quoting on subcontracts to report information directly to the City's DBE Compliance Officer.

#### 4. DBE Financial Institutions.

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on City contract to make use of these institutions. The DBE Certification Officer shall collect and disseminate information on the availability of such institutions.

# 5. Enforcement Remedies for Non-Compliant DBEs.

Upon a finding of non-compliance by a DBE with any DBE Program requirement, including, without limitation, any certification standard, the DBE Certification Officer shall be permitted to take one or more of the following actions:

- a. Place DBE on probation as a participant in the DBE Program for a period not to exceed twenty-four months;
- b. Terminate the DBE's participation in any or all City contracts;
- c. Suspend the DBE from participation in new City contracts as a DBE for a period not to exceed twelve months; or
- d. Decertify the DBE from the City's DBE Program

#### F. DBE COMPLIANCE OFFICER

- 1. The Executive Assistant to the Mayor for Economic Development shall appoint a DBE Compliance Officer who shall report to the Executive Assistant to the Mayor for Economic Development, but who shall have direct, independent access to the Chief Administrative Officer concerning DBE program matters and who shall be responsible for the following duties:
  - a. Implementing and monitoring the DBE program, in coordination with other appropriate officials, in accordance with the policies and procedures set forth in this Policy Memorandum;
  - b. Gathering and reporting statistical data and other information as required herein or at the request of the Chief Administrative Officer;
  - c. Reviewing third-party contracts and purchase requisitions for compliance with the DBE Program;
  - d. Working with all City departments, agencies, boards, commissions and corporations to ensure that DBE goals are included in solicitations for contracts and procurements, to the maximum extent practical and feasible, to achieve overall annual goals;
  - e. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner;
  - f. Holding focus sessions and pre-bid conferences to provide information regarding project requirements, answer questions about the project and allow potential DBE subcontractors to meet potential prime contractors;
  - g. Creating a bulletin board, website and/or hotline to provide information on currently available projects, pre-bid conferences and successful bidders;
  - h. Advising the Chief Administrative Officer on DBE matters and achievement;

- i. Undertaking reviews of reports and the performance of random desk and on-site audits of the prime contractor and DBE subcontractor compliance with the DBE Program;
- j. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance; and
- k. Working cooperatively with the DBE Certification Officer, Chief Administrative Officer and any other City personnel to ensure the maximum effectiveness of the DBE Program objectives.

# 2. Quarterly Participation Report.

The DBE Compliance Officer shall be responsible for creating and disseminating to the Chief Administrative Officer, on a quarterly basis, a DBE Participation Report. The DBE Participation Report shall contain, at a minimum, the following information:

- a. The total number and value of new City contracts awarded to all contractors during reporting period;
- b. Of the totals reflected in (a), the total number and value of new City contracts awarded to DBEs as primes during the reporting period (expressed as a percentage of (a));
- c. Of the totals reflected in (a), the total number and value of new City contracts awarded to 50/50 Joint Ventures during the reporting period (expressed as a percentage of (a));
- d. Of the totals reflected in (a), the total number and value of new City contracts awarded by non-DBE primes to DBEs as subcontractors during the reporting period (expressed as a percentage of (a));
- e. The total percentage of DBE participation in new City contracts awarded to all contractors during the reporting period (the sum of (b), (c) and (d));
- f. For (a), (b), (c) and (d), a breakdown of the total number and value of new City contracts awarded by type of contract (construction, professional services, personal services, procurement, etc.); and
- g. The approved overall goal for DBE participation, as set by the Chief Administrative Officer, for the reporting period.

#### 3. Monitoring and Enforcement Mechanisms.

#### a. Monitoring and Enforcement.

The DBE Compliance Officer will take, at a minimum, the following monitoring and enforcement mechanisms to ensure compliance with the DBE Program:

i. Bringing to the attention of the Chief Administrative Officer any false, fraudulent or dishonest conduct in connection with the

program, so that the Chief Administrative Officer can take all appropriate steps (e.g., referral to the District Attorney's Office for criminal prosecution, terminating contract, documenting non-compliance for use in responsiveness determinations in future contracts):

- ii. Establishing a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs; and
- iii. Keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

# b. Enforcement Remedies for Non-Compliant Contractors.

Upon a finding of non-compliance by a contractor with the DBE Program, the DBE Compliance Officer shall be permitted to take the following actions:

- Consider the contractor's non-compliance as a factor in determining DBE Program responsiveness in future solicitations for City contracts;
- ii. Terminate the contractor's participation in any or all City contracts; or
- iii. Suspend the contractor from participation in new City contracts for a period not to exceed twelve months.

# 4. Waiver.

The DBE Compliance Officer shall have the discretion to waive specific contract goals, either in the RFP/bid stage or after the actual award of the contract if the contractor can establish that despite its Best Efforts, as evaluated by the DBE Compliance Officer in accordance with the standards set forth below, the contractor was unable to meet the DBE participation goals established for such contract. Such waiver must be made in writing.

### 5. Best Effort Standards.

The DBE Compliance Officer shall be responsible for determining whether general contractors have made their best efforts to achieve the DBE Program contracting objectives in either their bid submission commitments or, upon award of the contract, their actual achievement of their stated contractual DBE participation commitment. In making this determination, the DBE Compliance Officer shall consider the following factors:

- a. <u>Pre-bid Meetings.</u> Whether the general contractor or subcontractor attended any pre-bid meetings scheduled by the City to inform DBEs of contracting and subcontracting opportunities.
- b. <u>Subcontractors Lists.</u> Whether the general contractor or subcontractor requested from the Mayor's Office of Economic Development a list of certified DBEs.
- c. <u>Small Contracts</u>. Whether the general contractor or subcontractor broke down contracts into dollar or work units to facilitate DBE participation, as consistent with the nature of the work to be performed and its relationship to other aspects of the project.
- d. <u>Follow-Up.</u> Whether the general contractor or subcontractor followed up initial indications of interest by DBEs by contacting those DBEs to determine with certainty if they remained interested in bidding.
- e. <u>Advertisement.</u> Whether the general contractor or subcontractor advertised in general circulation and trade association publications concerning subcontracting opportunities, and allowed subcontractors reasonable time to respond.
- f. Good Faith Negotiations. Whether the general contractor or subcontractor negotiated in good faith with interested DBEs and did not reject DBEs as unqualified without sound business reasons based on a thorough investigation of their capabilities.
- g. <u>Information.</u> Whether the general contractor or subcontractor provided interested DBEs with adequate information about the plans, specifications and requirements of the subcontract.
- h. <u>Written Notice.</u> Whether the general contractor or subcontractor took the necessary steps to provide written notice in a manner reasonably calculated to inform DBEs of subcontracting opportunities and allowed sufficient time for the m to participate effectively.
- i. <u>Community Resources.</u> Whether the general contractor or subcontractor used the services available to DBE community organizations, DBE contractors' groups, local state and federal disadvantaged business assistance offices, disability rights organizations, and other organizations that provide assistance in the recruitment and placement of DBE firms.
- j. <u>Contract Records.</u> Whether the general contractor or subcontractor has maintained the following records for each DBE that bids on any subcontract:
  - 1. Name, address and telephone number;
  - 2. A description of information provided by the general contractor or subcontractor; and
  - 3. A statement of whether an agreement was reached, and if not, why not, including any reasons for concluding that the bidder was deemed unqualified to perform the job.

### G. DEPARTMENT COOPERATION AND COMPLIANCE.

Heads of all City departments, agencies, boards, commissions and corporations, when exercising any contracting power on behalf of the City, shall:

- 1. Consult and cooperate with the DBE Compliance Officer in achieving the DBE Program goals and objectives through his or her exercise of the contracting power;
- 2. Implement the procedures established for achieving the objectives of the DBE Program; and
- 3. Report to the DBE Compliance Officer as required on the preparation of all RFP and bid specifications and on all negotiations and contracts in order to facilitate the DBE Compliance Officer's enforcement of the DBE Program.

# H. CONTRACTOR COOPERATION AND COMPLIANCE.

In order to be considered responsive to any solicitation for a City contract, potential contractors must, at a minimum, agree to use its Best Efforts to fully comply with the DBE Program, including all reporting requirements and any specific contract goals for DBE participation, and must submit the following information with its bid:

- 1. The scope of work and dollar value of any portions of the bid work (i.e., the DBE participation commitment) that will be subcontracted or purchased from, together with the names and addresses of each DBE (if known) who will perform the work or supply the goods;
- 2. For 50/50 Joint Ventures, the names, addresses, DBE or non-DBE status and percentage of participation of each joint venture partner; and
- 3. For DBE primes, the scope of work and dollar value of any portions of the bid work that the DBE prime will perform or supply through its own forces or through subcontracts with DBEs.

# I. REQUIRED RFP, BID AND CONTRACT PROVISIONS.

# 1. Required RFP and Bid Solicitation Language.

Absent a written waiver from the Chief Administrative Officer, every City RFP and bid solicitation for professional services or construction shall include the following provisions:

# a. DBE Program Compliance.

The requirements of the City's DBE Program apply to this contract. It is the policy of the City of New Orleans to practice nondiscrimination based on social and economic disadvantage, race, color, sex, gender,

disability or national origin. All firms qualifying under this solicitation are encouraged to submit proposals/bids. Award of this contract shall be conditioned upon satisfying the requirements of the DBE Program. A DBE contract goal of 35 percent has been established for this contract. The offeror/bidder shall agree to use its best efforts, as determined by the DBE Compliance Officer in accordance with the factors set forth in the DBE Program, to meet the contract goal for DBE participation in the performance of this contract.

# b. [Public Bid Language] DBE Participation.

The apparent lowest responsive bidder, as determined by the Department Head after review of the bid responses, shall be required to submit the following information to the DBE Compliance Officer within ten (10) days of receipt of written notification that the bidder/offeror is the apparent lowest responsible bidder:

- i. The names and addresses of all DBE firms that will participate in the contract;
- ii. The dollar amount commitment of the participation of each DBE firm participating in the contract;
- iii. Written confirmation from the named DBE(s), verifying their participation in the contract as provided in the commitments made under (i) and (ii) above; and
- iv. If the contract goal is not met, evidence of best efforts.

Upon receipt of the above-referenced materials, the DBE Compliance Officer shall then make a determination as to whether the bidder/offeror was responsive as to the DBE contract goal. If it is determined that the bidder/offeror was responsive to the DBE contract goal, the contract shall be awarded to the apparent lowest responsible bidder. If it is determined that the bidder/offeror was non-responsive to the DBE contract goal, the bid shall be rejected as non-responsive, and the next apparent lowest responsive bidder, as determined by the Department Head, shall be required to comply with the procedures set forth herein in this Section.

# c. [RFP Language] DBE Participation.

The top three scoring proposals, as determined by the RFP reviewing committee, shall be required to submit the following information to the DBE Compliance Officer within ten (10) days of receipt of written notification that the offeror is among the top three scoring proposals to be submitted to the Mayor for his selection of the winning proposal:

- i. The names and addresses of all DBE firms that will participate in the contract:
- ii. The dollar amount commitment of the participation of each DBE firm participating in the contract;
- iii. Written confirmation from the named DBE(s), verifying their participation in the contract as provided in the commitments made under (i) and (ii) above; and
- iv. If the contract goal is not met, evidence of best efforts.

Upon receipt of the above-referenced materials, the DBE Compliance Officer shall then make a determination as to whether each of the top three scoring proposals was responsive as to the DBE contract goal. For each proposal, if it is determined that the offeror was responsive to the DBE contract goal, the proposal shall be submitted to the Mayor for consideration for the award of the contract. If it is determined that the offeror was non-responsive to the DBE contract goal, that proposal shall be rejected as non-responsive, and the next highest scoring proposal, as determined by the RFP review committee, shall be required to comply with the procedures set forth herein in this Section.

# 2. Required Contract Provisions.

Absent a written waiver from the Chief Administrative Officer, every City professional service and construction contract shall include the following provisions:

# a. DBE Program Compliance.

Contractor agrees to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including, without limitation, all reporting requirements and specific DBE participation goals. Contractor's failure to carry out these requirements, as determined in good faith by the DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the City's Policy Memorandum for the DBE Program.

#### b. DBE Compliance Reporting.

Contractor agrees to provide quarterly written reports to the DBE Compliance Officer on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

- i. The name and business address of each DBE involved in the contract:
- ii. A description of the work performed and/or the product or service supplied by each DBE;
- iii. The date and amount of each expenditure made to a DBE; and
- iv. Such other information as may assist the DBE Compliance Officer in determining Contractor's compliance with the DBE Program and the status of any DBE performing any portion of the contract.

# c. Access to Books and Records.

Contractor agrees to grant DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program.

CLR,Jr./SL/emk